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## Inmate Discipline

### 701.1 PURPOSE AND SCOPE

This policy addresses the fair and equitable application of inmate rules and disciplinary sanctions for those who fail to comply (15 CCR 1081).

### 701.2 DEFINITIONS

**APPEAL** - *The process whereby a disciplined inmate requests review of the action by higher authority.*

**DISCIPLINARY HEARING** - *A non-judicial administrative procedure to determine if substantial evidence exists to find an inmate guilty or not guilty of a rule violation.*

**DISCIPLINARY HEARING OFFICER** - *A custody officer designated by the Watch Commander to conduct a disciplinary hearing.*

**DISCIPLINARY SEPARATION** - *The process of confining an inmate with loss of privileges, consistent with Title 15, as a result of the disciplinary hearing.*

**DUE PROCESS HEARING** - *A formal hearing before the disciplinary hearing officer in which the inmate is allowed to appear and present evidence in his own behalf.*

**FORMAL DISCIPLINE** - *Discipline which results from a disciplinary hearing as a result of a jail incident report.*

**INFORMAL DISCIPLINE** - *Counseling, warning, or verbal reprimand which may be recorded on a jail incident report.*

**PRE-HEARING SEPARATION** - *The confinement of an inmate in an individual room until an investigation or hearing is completed.*

**PROHIBITED ACTS** - *Any violation of law or facility rules and regulations.*

### 701.3 DUE PROCESS

Inmates who are subject to discipline as a result of rule violations shall be afforded the procedural due process by the Sheriff that is established in the policies, procedures, and practices relating to inmate discipline. All inmates will be made aware of the rules of conduct related to maintaining facility safety, security, and order, as well as clearly defined penalties for rule violations. Staff will not engage in arbitrary actions against inmates. All disciplinary actions will follow clearly established procedures. All disciplinary sanctions will be fairly and consistently applied (15 CCR 1081 et seq.).

The process for an inmate accused of a major rule violation includes:

- (a) A fair hearing in which the Captain or the authorized designee presents factual evidence supporting the rule violation and the disciplinary action.

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- (b) Advance notice to the inmate of the disciplinary hearing, to allow the inmate time to prepare a defense.
- (c) An impartial hearing officer.
- (d) The limited right to call witnesses and/or present evidence on his/her behalf.
- (e) The appointment of an assistant or representative in cases where the inmate may be incapable of self-representation.
- (f) A formal written decision that shows the evidence used by the hearing officer, the reasons for any sanctions and an explanation of the appeal process.
- (g) Reasonable sanctions for violating rules that relate to the severity of the violation.
- (h) The opportunity to appeal the finding.

### 701.3.1 INMATE RULES AND SANCTIONS

The Captain is responsible for ensuring that inmate rules and sanctions are developed, distributed, reviewed annually, and revised as needed.

Inmates cannot be held accountable for rules of which they are unaware. However, it is impossible to define every possible prohibited act or rule violation that might be encountered in a detention facility. Therefore, a current list of recognized infractions that are generally prohibited should be available in each housing unit. All inmates, regardless of their housing unit, shall have access to these rules. Inmate rules shall be translated into the languages that are understood by the inmates (see the Inmate Handbook and Orientation Policy).

For those individuals with limited literacy, who are unable to read English, and for persons with disabilities, staff shall provide verbal instruction or provide material in an understandable form regarding jail rules and disciplinary procedures and actions during the booking process.

Disciplinary procedures governing inmate rule violations should address rules, minor and major violations, criminal offenses, disciplinary reports, pre-hearing detention, and pre-hearing actions or investigations.

### 701.3.2 PLAN FOR INMATE DISCIPLINE

**Temporary Loss of Privileges:** For minor acts of non-conformance or minor violations of facility rules, staff may impose a temporary loss of privileges, such as access to television, telephones, commissary, or lockdown for less than 24 hours, provided there is written documentation and supervisory approval. The action taken may include counseling or advising the inmate of expected conduct without a written report.

**Disciplinary Actions:** Major violations of facility rules or repetitive minor acts of non-conformance or repetitive minor violations of facility rules shall be reported in writing by the staff member observing the act and submitted to the disciplinary officer. The degree of actions taken by the disciplinary officer shall be directly related to the severity of the rule infraction and promotion of

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desired behavior through a progressive disciplinary process. Acceptable forms of discipline shall consist of, but not be limited to, the following:

1. Loss of privileges.
2. Extra work detail.
3. Short term lockdown for less than 24 hours.
4. Removal from work details.
5. Forfeiture of "good time" credits earned under Penal Code Section 4019.
6. Forfeiture of "work time" credits earned under Penal Code Section 4019.
7. Disciplinary separation.

A staff member with investigative and disciplinary authority shall be designated as a disciplinary officer to impose such consequences. Staff shall not participate in disciplinary review if they are involved in the charges. Such charges pending against an inmate shall be acted on with the following provisions and within specified timeframes:

1. A copy of the report, or a separate written notice of the violation(s), shall be provided to the inmate.
2. Unless declined by the inmate, a hearing shall be provided no sooner than 24 hours after the report has been submitted to the disciplinary officer and the inmate has been informed of the charges in writing. The hearing may be postponed or continued for a reasonable time through a written waiver by the inmate, or for good cause.
3. The inmate shall be permitted to appear on their own behalf at the time of hearing and present witnesses and documentary evidence. The inmate shall have access to staff or inmate assistance when they have limited literacy, or the issues are complex.
4. A charge(s) shall be acted on no later than 72 hours after an inmate has been informed of the charge(s) in writing.
5. Subsequent to final disposition of disciplinary charges by the disciplinary officer, the charges and the action taken shall be reviewed by the facility manager or designee.
6. The inmate shall be advised in a written statement by the fact-finders about the evidence relied on and the reasons for the disciplinary action. A copy of the record shall be kept pursuant to Penal Code Section 4019.5.
7. The Watch Commander shall review all disciplinary action and appeals by an inmate. The Watch Commander shall forward all disciplinary action and appeals to administration for review once approved.

Nothing in this section precludes a facility administrator from administratively separating any inmate from the general population or program for reasons of personal, mental, or physical health, or under any circumstance in which the safety of the inmate, staff, program, or community is endangered, pending disciplinary action or a review as required by Title 15, Section 1053.

Nothing in this section precludes the imposition of conditions or restrictions that reasonably relate to a legitimate, non-punitive administrative purpose.

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Discipline shall be commensurate with the nature and circumstances of the offense committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories (28 CFR 115.78(b); 15 CCR 1082).

Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse (28 CFR 115.78(a)).

### 701.3.3 LIMITATIONS ON DISCIPLINARY ACTIONS

The Penal Code and the State Constitution expressly prohibit all cruel and unusual punishment. Disciplinary actions shall not include corporal punishment, group punishment when feasible, or physical or psychological degradation.

Disciplinary separation shall be considered an option of last resort and as a response to the most serious and threatening behavior, for the shortest time possible, and with the least restrictive conditions possible.

1. If an inmate is on disciplinary separation status for 30 consecutive days there shall be a review by the facility manager before the disciplinary separation status is continued. This review shall include a consultation with health care staff. Such reviews shall continue at least every fifteen days thereafter until the disciplinary status has ended. This review shall be documented.
2. The disciplinary separation cells or cell shall have the minimum furnishings and space specified in Title 24, Part 2, 1231.2.6 and 2.7. Occupants shall be issued clothing and bedding as specified in Title 15, Articles 13 and 14, and shall not be deprived of them through any portion of the day except that those inmates who engage in the destruction of bedding or clothing may be deprived of such articles. The decision to deprive inmates of such articles of clothing and bedding shall be reviewed by the facility manager or designee during each 24 hour period.
3. If after placement in separation, mental health or medical staff determine that an individual has serious mental illness or an intellectual disability, they shall be removed from disciplinary separation immediately upon this determination.

Penal Code Section 4019.5 expressly prohibits the delegation of authority to any inmate or group of inmates to exercise the right of punishment over any other inmate or group of inmates.

In no case shall a safety cell, as specified in Title 24, Part 2, 1231.2.5, or any restraint device be used for disciplinary purposes.

No inmate may be deprived of the implements necessary to maintain an acceptable level of personal hygiene as specified in Title 15, Section 1265.

Food shall not be withheld as a disciplinary measure.

Correspondence privileges shall not be withheld except in cases where the inmate has violated correspondence regulations, in which case correspondence may be suspended for no longer than 72 hours, without the review and approval of the facility manager.

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In no case shall access to courts and legal counsel be suspended as a disciplinary measure.

To the extent that there is available therapy, counseling or other interventions designed to address and correct underlying reasons or motivations for sexual abuse, the facility shall consider whether to require an inmate being disciplined for sexual abuse to participate in such interventions as a condition of access to programming or other benefits (28 CFR 115.78(d)).

### 701.3.4 POSTING

The Captain or the authorized designee is responsible for conspicuously posting notices or issuing information about rules, disciplinary procedures, and penalties. For those individuals with limited literacy, who are unable to read English, and for persons with disabilities, staff shall provide verbal instruction or provide material in an understandable form regarding jail rules and disciplinary procedures and actions during the booking process.

### 701.3.5 RULE VIOLATION REPORTS

California Penal Code § 4019.5 requires that all disciplinary infractions and punishment administered be documented. This requirement may be satisfied by retaining copies of rule violation reports, including the disposition of each violation (15 CCR 1084). Rule violation reports are required for major rule violations or any other violation that will require investigation or a formal resolution. The staff member who observed or detected the rule violation or who was charged with investigating a rule violation is responsible for completing the rule violation report. The rule violation report shall include, at a minimum:

- The date, time, and location of the incident.
- Specific rules violated.
- A written description of the incident.
- The identity of known participants in the incident.
- Identity of any witnesses to the incident.
- Description and disposition of any physical evidence.
- Action taken by staff, including any use of force.
- Name and signature of the reporting correctional deputy.
- Date and time of the report.

The supervisor investigating the violation shall ensure that certain items are documented in the investigation or rule violation report, including:

- Date and time the explanation and the written copy of the complaint and appeal process was provided to the inmate.
- The inmate's response to the charges.
- Reasons for any sanctions.
- The identity of any staff or witnesses involved, as revealed by the inmate.

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- The findings of the hearing officer.
- The inmate's appeal, if any.
- The appeal findings, if applicable.

### **701.4 REVIEW**

#### **701.4.1 SERGEANT REVIEW**

The Watch Commander is to review the completed inmate disciplinary form.

The Watch Commander will then sign the *Approved by Watch Commander* portion and submit it to the Facility Manager.

#### **701.4.2 FACILITY MANAGER REVIEW**

The Facility Manager or higher authority must review the disciplinary form and initial that the report was reviewed.

The Facility Manager may indicate any recommendations that would fall under the same provisions as *Watch Commander Review*, listed above, and must initial the Facility Manager Review portion of the form.

The form will then be routed to the Classification Deputy and will be distributed.

### **701.5 PRE-HEARING SEPARATION**

Pre-hearing separation of inmates charged with a rule violation is not considered punitive.

Inmates may remain in their assigned pod.

Pre-hearing separation shall be used only when necessary to ensure the safety of the inmate or the good order and security of the facility.

Pre-hearing separation is limited to the period of time prior to the hearing.

The incident report shall indicate the reasons for the pre-hearing separation.

### **701.6 HEARING PROCEDURE**

Inmates charged with major rule violations are entitled to be present at a hearing unless waived in writing or excluded because their behavior poses a threat to facility safety, security, and order (15 CCR 1081). Staff shall inform the hearing officer when any inmate is excluded or removed from a scheduled hearing and shall document the reasons for the exclusion or removal. A copy of the report shall be forwarded to the Captain.

Hearings may be postponed or continued for a reasonable period of time for good cause. Reasons for postponement or continuance shall be documented and forwarded to the Captain (15 CCR 1081).

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The hearing officer shall disclose to the accused inmate all witnesses who will be participating in the hearing. Inmates have no right to cross-examine witnesses. However, the accused inmate may be permitted to suggest questions that the hearing officer, in his/her discretion, may ask.

### **701.6.1 EVIDENCE**

Accused inmates have the right to make a statement, present evidence, and call witnesses at the hearing (15 CCR 1081). Requests for witnesses shall be submitted in writing by the inmate no later than 12 hours before the scheduled start of the hearing. The written request must include a brief summary of what the witness is expected to say.

The hearing officer may deny the request when it is determined that allowing the witness to testify would be unduly hazardous to institutional safety or correctional goals, when the witness's information would not be relevant or would be unnecessarily duplicative, or is otherwise unnecessary. The reason for denying a witness to testify shall be documented in the hearing report. The reason for denial of any documents requested by the inmate shall also be documented in the hearing record.

A witness's signed written statement may be submitted by the inmate as an alternative to a live appearance. The hearing officer shall review and determine whether the statement is relevant to the charges and shall document the reason for exclusion when any written statement is not given consideration.

Absent a safety or security concern, all staff reports and evidence, including exculpatory evidence, obtained during the disciplinary investigation shall be made available to the accused inmate prior to the hearing.

### **701.7 DISCIPLINARY HEARING**

This portion of the form is to be completed by the interviewing/hearing officer as follows:

- Indicate date, and time when hearing takes place. This should be 24 hours later if the inmate does not waive the 24 hours notice.
- Waiver: The inmate should be asked if he still wishes the hearing or wishes to receive discipline. Mark the applicable line. If yes, skip to *Findings* and continue. Have the inmate sign on the *Inmate Signature* line and indicate *Date and Time* of the signature.
- Inmate Comments: This space is for the inmate's explanation of the alleged misconduct.
- Hearing officer investigation: This space is for comments, interview of witnesses, and any additional investigation into the misconduct.
- Findings: Hearing officer indicates by marking the appropriate line, his /her findings into the allegations.
- Sanctions/Punishment Imposed: The hearing officer will write in his/her recommendation for disciplinary measures to be imposed on the inmate. The hearing officer will then sign his/her name and I.D. number, and date the form. The form will then be submitted to the Watch Commander for final review.

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### **701.8 DISCIPLINARY APPEALS**

Inmates wishing to appeal the decision of the hearing officer must do so in writing within five days of the decision. All appeals will be forwarded to the Captain or the authorized designee for review (15 CCR 1081).

Only appeals based on the following will be considered:

- (a) The disciplinary process or procedures were not followed.
- (b) There was insufficient evidence to support the hearing officer's decision.
- (c) The discipline imposed was not proportionate to the violation committed.

A final disposition shall be rendered as soon as possible if the inmate's appeal is granted or discipline is reduced but no later than 10 days after the appeal. The decision of the review authority shall be final and the result of the appeal shall be provided to the inmate in writing.

### **701.9 COMMISSARY POLICY**

If an inmate places an order through the kiosk or has an internet package ordered prior to being placed on disciplinary, the inmate shall NOT RECEIVE their commissary.

If an inmate is on disciplinary for multiple incidents, the 24 hour break in between disciplinary; the inmate shall NOT RECEIVE their commissary.

If at anytime an inmate is on disciplinary, and there is an order that has been placed and the items have already arrived in the jail; the inmate shall receive their hygiene and correspondence products only.

### **701.10 DISCIPLINARY RECORDS**

A copy of the initial report showing rule violations and the disciplinary disposition form shall be retained in the inmate's file as a permanent record.

### **701.11 HEARING OFFICER**

A staff member with investigative and disciplinary authority shall be designated as a disciplinary officer to impose such consequences. The hearing officer shall also have the power to impose sanctions. The hearing officer shall not investigate nor preside over any inmate disciplinary hearing on cases where he/she was a witness or was directly involved in the incident that generated the complaint (15 CCR 1081).